



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 18-202 and 17-105; FCC 19-67]

Children's Television Programming Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks further comment on the creation of a framework under which a broadcaster could satisfy its children's programming obligations by relying in part on special efforts to produce or support Core Programming aired on another station or stations in the market. The Children's Television Act (CTA) permits the Commission to consider special sponsorship efforts, in addition to consideration of a licensee's programming, in evaluating whether a licensee has served the educational and informational needs of children. The Commission invites commenters to submit proposals detailing a specific framework under which special sponsorship efforts may be considered as part of a broadcaster's license renewal.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATIONS IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 18-202 and 17-105, by any of the following methods:

- *Federal Communications Commission's Web site:* [http:// www.fcc.gov/cgb/ecfs/](http://www.fcc.gov/cgb/ecfs/). Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to

experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Kathryn Berthot of the Media Bureau, Policy Division, (202) 418-7454, or Jonathan Mark of the Media Bureau, Policy Division, (202) 418-3634. Direct press inquiries to Janice Wise at (202) 418-8165.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), FCC 19-67, adopted on July 10, 2019, and released on July 12, 2019.

The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) Web Site at http://fjallfoss.fcc.gov/edocs_public/ or via the FCC's Electronic Comment Filing System (ECFS) Web Site at <http://fjallfoss.fcc.gov/ecfs2/>. (Documents will be available

electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554.

The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis:

I. FURTHER NOTICE OF PROPOSED RULEMAKING

1. In this *FNPRM*, we seek further comment on the creation of a framework under which a broadcaster could satisfy its children's programming obligations by relying in part on special efforts to produce or support Core Programming aired on another station or stations in the market. The CTA permits the Commission to consider special sponsorship efforts, in addition to consideration of a licensee's programming, in evaluating whether a licensee has served the educational and informational needs of children. In the *NPRM*, the Commission noted that "few, if any, broadcasters have taken advantage of this opportunity to date" because the rules require the full Commission to approve the children's programming portion of renewal applications relying on such special efforts and there is little guidance on how such special efforts will be counted. The Commission accordingly invited comment on the establishment of a framework that would make the use of special sponsorship efforts a more viable option for broadcasters. We received very few comments on this issue. As NAB asserts, however, "[n]o broadcaster . . . will increase the risk to its license renewal by relying on a vague, uncertain option for fulfilling its children's TV obligations. To encourage stations to explore sponsorships, the standards for this option must be clear." Because the current record does not provide an adequate foundation for the Commission to adopt a clear standard for special sponsorship efforts, this *FNPRM* aims to create a more robust record and to solicit industry proposals for a detailed framework for evaluating special sponsorship efforts.

2. We invite commenters to submit proposals detailing a specific framework under which special sponsorship efforts may be considered as part of a broadcaster's license renewal. We tentatively conclude that such proposals should include, at a minimum, the following three elements: (1) the station must sponsor programming on a noncommercial television broadcast station located in the same DMA; (2) the proposal must establish a benchmark for how much funding a sponsoring station would be required to provide based on the size or circumstances of the sponsoring station; and (3) the sponsorship must result in the creation of new Core Programming or expanded hours of an existing Core Program. We discuss these three elements and seek comment on our tentative conclusions below.

3. First, we tentatively conclude that a proposed framework for special sponsorship efforts should require that the station sponsor programming on an in-market noncommercial station. We think that it would be beneficial to foster sponsorship of children's educational and informational programming on stations that are more likely to attract child audiences. Noncommercial stations in general, and PBS stations in particular, have a demonstrated commitment to serving the educational and informational needs of children and therefore may be more likely to attract larger audiences for their children's programming. NAB states that public television's experience with the 24/7 PBS KIDS channel illustrates that fostering more educational content on child-focused stations or program streams could boost viewership, as children's viewing of PBS has increased 47% among low-income families and 32% in broadcast-only homes since the inception of PBS KIDS. We seek comment on our tentative conclusion. Should we require that there be significant overlap between the coverage area of the sponsoring station and that of the noncommercial station? Are there other benefits to promoting sponsorship of children's programming on noncommercial stations? For example, is it reasonable to expect that it would be easier for parents to identify and locate Core Programming aired on noncommercial stations? Alternatively, should we consider a framework that also would permit special sponsorship efforts on in-market commercial stations?

4. Second, we tentatively conclude that a proposed framework for special sponsorship efforts should include a funding benchmark that takes into account the size or circumstances of the sponsoring station. Specifically, we tentatively conclude that large broadcast stations and/or stations with greater resources should be required to undertake more substantial sponsorship efforts (i.e., by providing a higher level of funding) than small broadcast stations and/or stations with less resources in order to receive sponsorship credit. We seek comment on this tentative conclusion. In addition, we seek comment on how to define or categorize sponsoring stations for purposes of such a requirement. For example, should sponsoring stations be categorized based on annual revenues, network affiliation and market size, or some other measure that appropriately factors the size and resources of the station? How many separate categories of sponsoring stations should there be? Further, we seek comment on how

much funding a station in each of these categories should be required to provide to receive credit for sponsoring programming on an in-market noncommercial station. Should such funding levels be defined as a percentage of the cost to produce the Core Program for a noncommercial station, a percentage of the sponsoring station's annual revenues, a percentage of the sponsoring station's advertising revenues for the timeslot "freed up" as a result of the sponsorship, or should such funding levels be based on some other measure?

5. Third, consistent with the Commission's previous guidance on this issue, we tentatively conclude that a proposed framework for special sponsorship efforts must require that the sponsorship result in the creation of new Core Programming or expand the hours of an existing Core Program on the in-market noncommercial station. We think that a licensee should receive credit only where its sponsorship results in a net increase in the amount of Core Programming on the in-market noncommercial station. We seek comment on this tentative conclusion.

6. We invite commenters to address the costs and benefits of the proposed framework discussed above and to suggest alternatives. In particular, we invite noncommercial stations to provide input on how this or any alternative proposed framework would be effective in facilitating the sponsorship of children's educational and informational programming on noncommercial stations. We reiterate that without a clear framework for evaluating the sponsorship efforts of broadcast stations, broadcasters are unlikely to risk their license renewals by pursuing this option; thus, we urge commenters to offer detailed proposals so that we are able to provide specific guidance on how special sponsorship efforts will be evaluated.

7. We seek comment on how a station's sponsorship efforts should be attributed to its overall Core Programming hours. We tentatively conclude that a sponsored Core Program that satisfies each element of the proposed framework discussed above should be counted on a minute-for-minute basis (i.e., count each minute of a sponsored program as the equivalent of a minute of Core Programming). We request comment on this tentative conclusion and invite commenters to suggest alternative proposals for quantifying sponsorship efforts. Should multiple stations in the same market be permitted to jointly

sponsor a Core Program on an in-market noncommercial station? If so, how should each station's individual sponsorship efforts count toward its overall Core Programming hours?

8. As noted above, the CTA states that special sponsorship efforts may be considered only "in addition to considering the licensee's [educational] programming." Thus, we think it is clear that the statute requires that each broadcast station air some amount of Core Programming on its own station. We seek comment on whether broadcasters that sponsor Core Programs on in-market noncommercial stations should have the flexibility to decide how much Core Programming to air on their own stations, provided that their Core Programming hours when combined with their special sponsorship efforts are the equivalent of 156 annual Core Programming hours under the revised processing guidelines, or whether we should establish a minimum number. Additionally, we seek comment on how special sponsorship efforts will work in conjunction with our revised processing guidelines. We tentatively conclude that a station that sponsors programming on an in-market noncommercial station should treat all such sponsored programming as regularly scheduled weekly programming for purposes of the processing guidelines. Thus, for example, if a station sponsors a half hour per week of Core Programming on an in-market noncommercial station for 52 weeks, the station will be credited with airing 26 hours of regularly scheduled weekly programming. The station could then satisfy the processing guidelines by complying with either Category A or B for the remaining hours. We seek comment on this tentative conclusion.

9. Finally, we tentatively conclude that Media Bureau staff, rather than the full Commission, should be permitted to approve the children's programming portion of renewal applications of licensees relying in part on special sponsorship efforts that satisfy the proposed framework discussed above. We tentatively conclude that requiring full Commission review of the renewal applications of stations engaging in sponsorship efforts effectively discourages any station from exploring such an option. We seek comment on this tentative conclusion. In addition, we note that FCC Form 2100 Schedule H (formerly, Form 398), Children's Television Programming Report, requires stations to provide certain information regarding each Core Program sponsored on another station. We request comment on any changes to this portion of the form that may be necessitated as a result of guidance on

special sponsorship efforts provided in this proceeding.

II. PROCEDURAL MATTERS

A. Initial Paperwork Reduction Act Analysis

10. This document may result in new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA). Public and agency comments are due 60 days after publication of this document in the Federal Register. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

B. Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA) the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) concerning the possible significant economic impact on small entities by the rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *FNPRM*. Pursuant to the requirements established in 5 U.S.C. 603(a), The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

12. *Need for, and Objectives of, the FNPRM.* The Children’s Television Act of 1990 (CTA) requires that the Commission consider, in its review of television license renewals, the extent to which the licensee “has served the educational and informational needs of children through its overall programming, including programming specifically designed to serve such needs.” The CTA provides that, in addition to considering the licensee’s programming, the Commission also may consider in its review of television license renewals any special efforts by the licensee to produce or support programming broadcast by

another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children. The Commission adopted rules implementing the CTA in 1991, and revised these rules in 1996, 2004, and 2006.

13. On July 12, 2018, the Commission released a Notice of Proposed Rulemaking seeking comment on the creation of a framework under which broadcasters could satisfy their children's programming obligations by relying in part on special sponsorship efforts. The Commission, however, received very few comments on this issue. Because the current record does not provide an adequate foundation for the Commission to adopt a clear standard for evaluating special sponsorship efforts, the *FNPRM* invites commenters to submit proposals detailing a specific framework under which special sponsorship efforts may be considered as part of a broadcaster's license renewal. The *FNPRM* tentatively concludes that such proposals should include, at a minimum, the following three elements: (1) the station must sponsor programming on a noncommercial television broadcast station located in the same DMA; (2) the proposal must establish a benchmark for how much funding a sponsoring station would be required to provide based on the size or circumstances of the sponsoring station; and (3) the sponsorship must result in the creation of new Core Programming or expanded hours of an existing Core Program. Further, the *FNPRM* tentatively concludes that Media Bureau staff, rather than the full Commission, should be permitted to approve the children's programming portion of renewal applications of licensees relying in part on special sponsorship efforts that satisfy the proposed sponsorship framework.

14. *Legal Basis.* The proposed action is authorized pursuant to sections 303, 303b, 307, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303, 303b, 307, and 336.

15. *Description and Estimates of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is

one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The rules proposed herein will directly affect certain small television stations. Below is a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

16. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less. Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

17. In addition, the Commission has estimated the number of licensed commercial television stations to be 1,383. Of this total, 1,257 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017. Such entities, therefore, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 378. The Commission, however, does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

18. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another

element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules would apply does not exclude any television station from the definition of a small business on this basis and therefore could be over-inclusive.

19. There are also 417 Class A stations. Given the nature of this service, we will presume that all 417 of these stations qualify as small entities under the above SBA small business size standard.

20. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the *FNPRM* and consider whether small entities are affected disproportionately by any such requirements.

21. *Reporting Requirements.* The *FNPRM* may result in modifications to the special sponsorship efforts portion of FCC Form 398.

22. *Recordkeeping Requirements.* The *FNPRM* does not propose to adopt recordkeeping requirements.

23. *Other Compliance Requirements.* The *FNPRM* seeks further comment on the creation of a framework under which broadcasters could satisfy their children’s programming obligations by relying in part on special sponsorship efforts.

24. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

25. The framework proposed in the *FNPRM* is intended to provide broadcasters, including small entities, greater flexibility in fulfilling their children's programming obligations. The *FNPRM* tentatively concludes that a proposed framework for special sponsorship efforts should include a funding benchmark that takes into account the size or circumstances of the sponsoring station and seeks comment on whether such a funding benchmark should be based on a station's annual revenues, network affiliation and market size, or some other measure. Thus, we expect that the proposed revisions, if adopted, will only benefit affected small entities.

26. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule.*—None.

C. Ex Parte Rules

27. *Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt,

searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

28. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th

Street, SW, Washington, DC 20554.

29. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

30. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

31. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 303, 303b, 307, 335, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 303, 303b, 307, 335, and 336, that this Further Notice of Proposed Rulemaking IS ADOPTED.

List of Subjects in 47 CFR Part 73

Education, Reporting and recordkeeping, Television.
Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2019-16005 Filed: 8/15/2019 8:45 am; Publication Date: 8/16/2019]